

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE G. PATRI BASAVANA GOUD

WRIT PETITION NUMBER 2066 OF 1998

Between:

Sri K. N. Balasubramanyam
Prop: Nagarjuna Cement Products
84/2A, Kulai village
Mangalore
care of Nagson and Company
4/1, Tumkur Road
Yeshwanthpur
Bangalore ...Petitioner

(By Sri R.Gururajan, Advocate)

And:

1. Sri K. Thaniyappa
son of Koragappa Poojary
Kulari post
Mangalore

2. The Presiding Officer
Labour Court
Mangalore ...Respondents

(By Smt. M.R. Shanthakumari HCGP
for R-2; Sri Raja Subramanya Bhat,
Adv. for R-1)

This writ petition is filed under Article 226 of the Constitution seeking to quash the order dated 17-9-1997 in Application No.(LCM) 8/1994 passed by the second respondent at Annexure-F and to further remand the matter for adjudication afresh by the second respondent.

This writ petition coming on for hearing this day, the Court made the following:

ORDER

The petitioner employer, in this writ petition under Article 226 of the Constitution, calls in question the order of the Labour

Court, Mangalore dated 17-9-1997 by which the first respondent workman was directed to be paid, in computation under Section 33C(2) of the Industrial Disputes Act, 1947 ('Act' for short), a sum of Rs.1,69,519.46 by way of wages due to him until the date he tendered resignation i.e. until 5-5-1994.

2. The impugned order is an ex parte order. Learned counsel for the petitioner Sri Gururajan submits that the petitioner being the resident of Bangalore and the notice having been effected by publication in a newspaper which is normally not read by a person like the petitioner, the petitioner has come to be placed ex parte and that the circumstances are such as the petitioner needs to be afforded an opportunity to put forth his case and to have the matter decided on merits.

3. Sri Raja Subramanya Bhat, learned counsel for the first respondent however submits that the service of notice by publication in Udayavani Kannada Daily, a Bangalore edition, was taken recourse to only after repeated attempts were made to have the notice served by registered post acknowledgment due. *failed.*

4. I am of the opinion that the petitioner needs to be afforded an opportunity to put forth his case on merits, and that, for that reason, the matter needs to be remitted to the Labour Court for fresh disposal in accordance with law. It is in this back ground, ~~that~~ On an application under Section 33C(2) of the Act leading to passing of the impugned award, the first respondent workman had claimed wages due to him from 1988 to 5-5-1994. For the earlier period, he had filed a similar application which had culminated in an award for a sum of Rs.99,982/-. The said order was also an exparte order, and it was also called in question by the present petitioner in Writ Petition No.36873 of 1994. On 30-3-1995, as per order at Annexure-A, this court allowed the said writ petition and remitted the matter to the Labour Court for fresh disposal in accordance with law, subject to the petitioner paying Rs.35,000/-. As is now being submitted, instead of paying the said sum of Rs.35,000/- and having the matter adjudicated afresh on merits, the petitioner employer paid the entire sum of Rs.99,982/- to the workman in full satisfaction of the earlier order of the Labour Court under Section 33C(2) of the

Act. It was then that the workman filed the second application under Section 33C(2) for the subsequent period.

5. In the above back ground and particularly having regard to the circumstances in which the petitioner has been placed ex parte, I am of the opinion that the impugned order needs to be set aside and the matter needs to be remitted to the Labour Court for fresh disposal in accordance with law. At the same time, the interest of the first respondent workman also needs to be taken care of because, he is not at fault for the petitioner being proceeded against ex parte. It, therefore, becomes necessary that the first respondent workman be compensated in an appropriate manner.

6. Petition allowed. Impugned order is quashed. Matter is remitted to the Labour Court for fresh disposal in accordance with law. Without the necessity of a separate notice, both the parties will appear before the Labour Court concerned on 27th July 1998 for further direction from the Labour Court. This is subject to the petitioner paying to the first respondent workman or depositing

before the Labour Court concerned on or before 27th July 1998, a sum of Rs.20,000/-. Out of this amount of Rs.20,000/-, a sum of Rs.5,000/- shall be taken as compensation to the first respondent workman for the present litigation, and it shall be without reference to the ultimate result of the application under Section 33C(2) of the Act. Balance of Rs.15,000/-, however, shall be subject to the result of the application under Section 33C(2). First respondent workman can withdraw the said amount of Rs.20,000/- by filing an affidavit before the Labour Court undertaking to the effect that, in the event his application comes to be dismissed, he will repay the sum of Rs.15,000/-. Before the Labour Court, the petitioner is permitted to file objections to the first respondent's application under Section 33C(2), and thereafter, both the parties at liberty to adduce evidence.



Sd/-
JUDGE